

Claimant testified he reported the injury and its work-related nature to Mr. Dwight E. Osborn sometime before he left work for treatment. Claimant also testified he told Becky Birkenbaugh he would be off work for surgery. Respondent has presented evidence

directly contradictory in the form of a statement from Mr. Osborn. Respondent contends it did not receive any notice until August 1999. The evidence also establishes claimant had received treatment for upper extremity problems in the summer of 1998 and the record of that treatment indicates it was for a problem that had existed for approximately a year. Finally, the evidence establishes respondent provided training to advise employees of the need to give notice of any work-related injury and that claimant received this training.

The Board generally gives some deference to the ALJ's evaluation of credibility in cases where the ALJ has had the opportunity to observe the witness testify. In this case, both claimant and respondent's representative, Bill Amerine, testified before the ALJ. The ALJ did not believe claimant had provided notice, as claimant testified, before he left work for treatment to his arm. This conclusion is also supported, in part, by the fact claimant did not ask respondent to provide medical treatment. He went on his own, obtained surgery, and only after it appeared additional surgery might be necessary did he ask respondent to provide the care. Under these circumstances, the Board accepts the ALJ's evaluation of credibility. For this reason, the Board affirms the decision by the ALJ.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Nelsonna Potts Barnes on December 27, 1999, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 2000.

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BOARD MEMBER

c: Stephen J. Jones, Wichita, KS  
William L. Townsley, III, Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director